No. 4529

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MARIE GAZZERA and A. GAZZERA,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR

STERLING CARR,
United States Attorney,

T. J. SHERIDAN,
Asst. United States Attorney,
Attorneys for Defendant in Error.

Neal, Stratford & Kerr, S. F. 49060

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STATEMENT.

The defendants, Marie Gazzera and A. Gazzera, and one Hector Valentino were informed against in the District Court of the Northern District of California in an information of two counts charging violation of the National Prohibition Act, to-wit, first, the maintenance of a common nuisance; second, the unlawful possession of intoxicating liquor. The three defendants were placed on trial, the defendant Valentino being absent; all were convicted on both counts.

It was shown practically without dispute that the defendants Gazzera were the proprietors of the place at 847 Montgomery Street, San Francisco, and that

Valentino was their waiter (pp. 30-34). The place was a dining room with a saloon and kitchen, restaurant, hotel upstairs. Soft drinks were sold (Tr. p. 34). On November 4, 1924, prohibition agents entered the place, saw the defendants Gazzera seated at a table at dinner. The defendant Valentino was present serving and, as one witness said, at a table six feet away from them there was a party with wine on the table and under the table and wine glasses in front of them. This was seized. Valentino was called over and the party stated they bought the liquors from him. The exact transaction perhaps is not clear:

The defendants claimed: (1) that the verdict against Mrs. Gazzera was contrary to law; (2) that the court erred in denying motion for a new trial; (3) that the verdict was contrary to law in respect to the nuisance charge; (4) that the court improperly instructed the jury; (5) that the information did not charge a crime; (6) that the verdict should have been acquittal.

ARGUMENT.

The record is insufficient to show any error or to raise any of the points discussed.

There was no motion for a directed verdict, either at the close of the testimony for the government (Tr. p. 32) or at the close of all of the testimony (Tr. p. 36). There was no ruling upon such a motion and accordingly no exception.

Accordingly the sufficiency of the evidence is not now subject to review.

Lucis vs. U. S. 2. Fed. (2d) 975

Deupree vs. U. S. 2 Fed. (2d) 44

There was no objection or exception to the charge of the court in any respect (Tr. p. 40). There were no requests made to charge on behalf of any defendant or refused.

There were no exceptions taken to rulings on evidence. Indeed there was scarcely an objection made to any question. A couple of objections appear at Tr. pp. 24-25. The rulings thereon are not now urged as error. They are wholly unimportant. There is no question arising upon the record subject to review.

Bilboa vs. U. S. 287 F. 125.

The information was sufficient to charge a crime under either count.

There being no objection or exceptions at the trial, the only point remaining that could arise on the

record would be the sufficiency of the information. But it is seen that the crime was charged in the usual language found in such informations and that it is sufficient has been held by this court in the case of

Young vs. U. S., 272 Fed. 967.

In conclusion it is submitted that the instant appeal is wholly without merit and that the judgment should be affirmed.

Respectfully submitted,

STERLING CARR,
United States Attorney,

T. J. SHERIDAN,
Asst. United States Attorney.
Attorneys for Defendant in Error.